

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

ANTHONY PURYEAR,

PLAINTIFF

vs.

No. 1:98cv86-D-D

TUPELO PUBLIC SCHOOL DISTRICT,  
DEBBIE DAVIS and LYNN BRYANT

DEFENDANTS

OPINION

Presently before the court is the Defendants' motion for summary judgment. Upon due consideration, the court finds that the motion should be granted.

Factual Background

The Plaintiff, Anthony Puryear ("Puryear"), worked as a dishwasher and custodian for the Defendant Tupelo Public School District ("TPSD") from February 12, 1997, until August 4, 1997, when he was told he was being terminated for making unauthorized long-distance telephone calls during work hours. Puryear then, after properly exhausting his administrative remedies, filed this action against TPSD and two individual TPSD officials, Debbie Davis and Lynn Bryan (collectively "Defendants"). Puryear claims that his termination was based on his race and his involvement in an interracial relationship, in violation of Title VII of the Civil Rights Act of 1964. In addition, Puryear seeks recovery under state law for emotional distress and slander. Now, the Defendants have moved this court for an entry of summary judgment.

Summary Judgment Standard

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Under Rule 56(e) of the Federal Rules of Civil Procedure, the

burden then shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324. While all legitimate factual inferences must be viewed in the light most favorable to the non-movant, Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986); Celotex Corp., 477 U.S. at 322. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

In the case *sub judice*, Puryear has failed to respond to the Defendants' motion for summary judgment. While this court cannot grant summary judgment merely because there is no opposition to the motion, the court may accept the Defendants' version of the facts as undisputed and grant the motion if the Defendants make a prima facie showing of their entitlement to summary judgment. Hetzel v. Bethlehem Steel Corp., 50 F.3d 360, 362 (5<sup>th</sup> Cir. 1995); Eversley v. Mbank Dallas, 843 F.2d 172, 173 (5<sup>th</sup> Cir. 1988). In any event, the Defendants must meet their burden of establishing that no genuine issue of material fact exists as to Puryear's claims and that they are entitled to judgment as a matter of law.

### Discussion

#### *A. Title VII*

Title VII of the Civil Rights Act of 1964 provides, in relevant part, "[i]t shall be an unlawful

employment practice for an employer . . . to discharge any individual . . . because of such individual's race . . .” 42 U.S.C. § 2000e-2(a)(1). In a Title VII race discrimination case, the ultimate question is whether the plaintiff's race was a determining factor in an adverse employment decision taken against him. Rhodes v. Guiberson Oil Tools, 39 F.3d 537, 544 (5<sup>th</sup> Cir. 1994). However, given that many employment discrimination cases involve elusive factual questions, the Supreme Court has devised an evidentiary procedure that allocates the burdens of production and persuasion when the plaintiff is unable to come forward with direct evidence of discrimination.

In a claim of race discrimination brought under Title VII, the evidentiary procedure to be utilized was originally introduced in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), and more recently reaffirmed in St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993). Under this procedure, the plaintiff has the initial burden of proving a prima facie case of discrimination. McDonnell Douglas, 411 U.S. at 802. A plaintiff may prove a prima facie case of discrimination by showing:

- (1) that he is a member of a protected class;
- (2) that he was qualified for the position that he held;
- (3) that he suffered an adverse employment decision; and
- (4) that his employer replaced him with a person who is not a member of the protected class or, in cases where the employer does not intend to replace the plaintiff, retained others in similar positions who are not members of the protected class.

Meinecke v. H & R Block of Houston, 66 F.3d 77, 83 (5<sup>th</sup> Cir. 1995). If the plaintiff successfully establishes a prima facie case of discrimination, the burden of production shifts to the employer to articulate some legitimate, nondiscriminatory reason for the termination. Meinecke, 66 F.3d at 83. Once the employer articulates its nondiscriminatory reason, the burden shifts back to the plaintiff,

who must prove that the employer's articulated reason represents a pretext for a discriminatory decision. *Id.* Ultimately, the burden of persuasion belongs to the plaintiff, who must establish a violation by a preponderance of the evidence. Whiting v. Jackson State Univ., 616 F.2d 116, 121 (5<sup>th</sup> Cir. 1980). In addition, in order to avoid the grant of a properly made motion for summary judgment, a plaintiff must present evidence sufficient to make a reasonable inference of discriminatory intent. LaPierre v. Benson Nissan, Inc., 86 F.3d 444, 450 (5<sup>th</sup> Cir. 1996). In the case *sub judice*, Puryear cannot meet this burden.

Puryear charges that he was terminated because of his race and due to an interracial relationship he was involved in with a co-worker, both protected categories under Title VII. Assuming *arguendo* that Puryear can establish a prima facie case of racial discrimination (although there is no evidence before the court regarding the fourth element of Puryear's prima facie case), the Defendants have articulated a legitimate, nondiscriminatory reason for Puryear's termination. Namely, that Puryear was fired due to his unauthorized and admitted use of school telephones to make long distance telephone calls during work hours, a violation of TPSD policy. The articulation of this legitimate, nondiscriminatory reason for firing Puryear satisfies the Defendants' burden of production. The burden now shifts back onto Puryear to prove that the Defendants' articulated reason was a mere pretext for discrimination. Meinecke, 66 F.3d at 83.

In analyzing whether Puryear has met this burden sufficiently to overcome summary judgment, the court must determine whether the evidence taken as a whole "(1) creates a fact issue as to whether each of the employer's stated reasons was what actually motivated the employer and (2) creates a reasonable inference that [race] was a determinative factor in the actions of which the plaintiff complains." Rhodes, 75 F.3d at 994. Considering the evidence as a whole, it is apparent

that the Defendants' decision to terminate Puryear was based solely on his violation of TPSD policy regarding telephone usage during working hours. Puryear has not presented any evidence or filed a response to rebut the Defendants' assertions, and none of the evidence before the court suggests that the Defendants possessed discriminatory intent. Based on the admissible evidence before the court, no reasonable juror could determine that Puryear was subjected to discrimination based upon his race. It is well established that speculative and unsubstantiated assertions, such as those contained in Puryear's complaint, are not sufficient to create an inference of discrimination. Grimes v. Texas Dep't of Mental Health and Mental Retardation, 102 F.3d 137, 139-40 (5<sup>th</sup> Cir. 1996). No genuine issue of material fact regarding Puryear's claim exists, and the Defendants are entitled to the entry of a judgment as a matter of law. Accordingly, the court shall grant the motion for summary judgment as to Puryear's Title VII claims of racial discrimination.

*B. State Law Claims*

Having dismissed the claims over which it has original jurisdiction, the court declines to exercise supplemental jurisdiction over Puryear's state law claims. See 28 U.S.C. §1367(c). Therefore, the court shall dismiss Puryear's state law claims without prejudice.

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_ day of October 1999.

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United States District Judge

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ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that

- (1) the Defendants' motion for summary judgment is GRANTED;
- (2) the Plaintiff's federal claims are DISMISSED;
- (3) the Plaintiff's state law claims are DISMISSED WITHOUT PREJUDICE;
- (4) the Defendants' motion to dismiss is DENIED AS MOOT; and
- (5) this case is CLOSED.

All memoranda, depositions, declarations and other materials considered by the court in ruling on this motion are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the \_\_\_\_ day of October 1999.

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United States District Judge